

Private Letter Ruling: Petition is granted to include Illinois resident shareholder in composite return filed by Subchapter S corporation.

August 11, 1999

Dear:

This is in response to your letters dated June 16, 1998 and August 9, 1999, in which you request a Private Letter Ruling on behalf of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx and xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.1120 appears to be contained in your request. The Private Letter Ruling will bind the Department only with respect to xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx and xxxxxxxxxxxx for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxxxxx nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them in your June 16, 1998 letter are as follows:

This letter is to request permission to include an Illinois resident shareholder in xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Illinois composite tax filing (Form IL-1023-C). For years 1989 through 1997, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx has filed composite tax returns for its 100% non-resident Illinois shareholders (filed under FEINs xxxxxxxxxxxx and xxxxxxxxxxxx). During 1998, a resident of Illinois became a shareholder. This shareholder files a resident Illinois individual income tax return and owns a small ownership percentage of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. This individual's ownership percentage is 0.119%.

xxx will be filing a 1998 Illinois composite tax return on behalf of its 99.881% Illinois non-resident shareholders. For greater compliance and administrative ease, we respectfully request permission to include the 0.119% Illinois resident in our 1998 and future composite tax filings.

In your letter dated August 9, 1999, you added:

In order to ease the complexity of filing our Illinois and xxxxxxxxxxxx tax returns, we respectfully request that we are allowed to include xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, an Illinois resident, in our 1998 Illinois Composite Tax Return filing. xxxxxxxxxxxx ownership percentage is only 0.119%. I have previously faxed you a copy of a draft of our 1998 Illinois Composite Tax Return that includes his percentage ownership. The amount reported as his share is only \$158. When xxxxxxxxxxxx prepares his 1998 Illinois resident return, he will report 100% of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx income. If we are allowed to include him in our composite filing, he will then be allowed an Illinois credit of \$158.

If we are not granted permission to include xxxxxxxxxxxx in our Illinois composite tax filing, we will greatly increase the complexity in preparing our 1998 xxxxxxxxxxxx return which reports all other state tax liabilities on each shareholder's Schedule K-1. If a composite

filing is not allowed, the Illinois state tax liability amounts must be manually input on each shareholder's Schedule K-1.

The draft 1998 Form IL-1023-C you sent shows a composite income and replacement tax liability of \$153,174 for 42 shareholders. The attached schedules show that xxxxxxxxxx is the only shareholder with an Illinois address, and that his share of the composite liability is \$158. The composite liability, including xxxxxxxxxx share, is computed on the portion of the base income of xx that is allocated or apportioned to Illinois.

In our telephone conversations regarding this matter, you stated that your tax compliance software prepares each shareholder's xxxxxxxxxx Schedule K entry for taxes paid to other states by taking the total tax paid and multiplying that amount by the shareholder's ownership percentage. Accordingly, if less than 100% of the shareholders participate in the Illinois composite return filing, this software will allocate an incorrect amount of tax to each shareholder. You have found that this software makes no provision for manually overriding the erroneous computation. This error is can only be corrected by either preparing each Schedule K entirely by hand or by writing over the erroneous lines as prepared using your software.

Ruling

Section 506(f) of the Illinois Income Tax Act (35 ILCS 5/506(f)) provides:

The Department may promulgate regulations to permit nonresident individual partners of the same partnership, nonresident Subchapter S corporation shareholders of the same Subchapter S corporation, and nonresident individuals transacting an insurance business in Illinois under a Lloyds plan of operation, and nonresident individual members of the same limited liability company that is treated as a partnership under Section 1501 (a)(16) of this Act, to file composite individual income tax returns reflecting the composite income of such individuals allocable to Illinois and to make composite individual income tax payments. The Department may by regulation also permit such composite returns to include the income tax owed by Illinois residents attributable to their income from partnerships, Subchapter S corporations, insurance businesses organized under a Lloyds plan of operation, or limited liability companies that are treated as partnership under Section 1501 (a)(16) of this Act, in which case such Illinois residents will be permitted to claim credits on their individual returns for their shares of the composite tax payments.

86 Ill. Admin. Code § 100.5100(c) provides:

Petition for Residents. Individuals, trusts, and estates that are residents of Illinois may be included in a composite return if the authorized agent files a petition with the Department of Revenue and the petition is granted. The Department shall grant the petition if the authorized agent clearly demonstrates that no other method of filing would achieve the same degree of compliance and administrative ease for both the Department and the taxpayers. Factors to be considered in granting the petition include: the quantity of partners or shareholders involved; the inability of the authorized agent to file the composite return except in this manner; and the availability of a reliable method for claiming credit on the separate returns pursuant to Section 100.5712. The petition must be filed

prior to the end of the authorized agent's taxable year, and the petition must be granted or denied prior to the due date of the return without regard to extensions.

Based on the facts you have represented above, allowing xx to include xxxxxxxxxx in its composite return will achieve a degree of "administrative ease for . . . the taxpayers" that is not available by any other means. Accordingly, the petition to include xxxxxxxxxx in the composite return for 1998 and future years is granted.

As noted in your petition, as an Illinois resident, xxxxxxxxxx will have to include his share of the base income of xx base income in his Illinois net income, without regard to allocation or apportionment. In order to claim the credit for taxes paid on his behalf on a composite return, xxxxxxxxxx should include the amount so paid on the line for withholding taxes (currently, Line 17) of his Form IL-1040 and write "Composite Return Credit -- See Attached" next to that entry. He should also attach to his Form IL-1040 a copy of this letter and a copy of the relevant Form IL-1023-C with its schedule showing the amount of tax paid on his behalf.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

Very truly yours,

Paul Caselton
Deputy General Counsel -- Income Tax